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SUBJECT: OSCE PERMANENT COUNCIL: REPLY TO AMBASSADOR AZIMOV ON MEDIA FREEDOM IN THE U.S.

¶1. (U) Post is authorized to present the following statement at the May 7 Permanent Council meeting in Vienna.

Begin text:

Thank you, Madam Chairwoman.

Last week, the United States drew to the attention of the Permanent Council the annual World Press Freedom Day. Ambassador Azimov responded to our intervention and cited media-freedom cases in the United States which the Russian Federation believed did not receive as much attention in the OSCE as they merit. Russia followed with a detailed written document, circulated this week as PC.DEL/295/09.

We welcome Russia's raising these cases. The Permanent Council exists for the kind of peer review and dialogue that Russia has initiated. We want to respond fully, and will do so in writing to save time in the Permanent Council session. We are of course also willing to discuss such cases privately. We do so in the hope that we can count on the Russian Federation's continuing commitment to fruitful conversation on media freedom, whether the cases under discussion be those in the United States, other participating States, or Russia itself.

In this regard, we would like to emphasize again the important role of the Representative for Freedom of the Media. Mr. Haraszti's reports to the Permanent Council and the activities of his office have rightly cast a spotlight on egregious abuses involving freedom of expression, especially highlighting the growing problem of violence against media workers in the OSCE region. This violence is disturbing in itself, but it is even more so when governments fail to react strongly against it or foster a climate of impunity, in which perpetrators feel safe from apprehension and punishment. We all know that these conditions exist today in the OSCE region, and it is Mr. Haraszti's job to bring them to our attention. It is also true that the spotlight needs to shine where the darkness is greatest, even if that means that on some occasions one participating State might come under more scrutiny than another. Not to do so would cause the OSCE to descend into a Potemkin Village of false niceties. We cannot pretend that conditions are essentially the same in all our 56 participating States. That is simply not true, and would imply not double, but multiple standards, and make a mockery of our OSCE commitments.

The real answer to any question of evenhandedness by RFOM is for each participating State to fulfill our media freedom commitments equally. When that is a reality, individual participating States will have no more cause to feel singled out, either by Mr. Haraszti's office, or by other international watchdogs like the Committee to Protect Journalists, Reporters without Borders and Freedom House. The United States again commends the repeated efforts of the Representative on Freedom of the Media to sound the alarm on the growing problem of violence against journalists and to remind OSCE participating States of our OSCE commitments on press freedom. As Miklos Haraszti has said, "Attempts at silencing critical voices with the help of violence should be seen and handled by law enforcement not as ordinary crimes, but as acts aimed to undermine the basic democratic value of

free expression."

Thank you, Madame Chairwoman.

Supporting Fact Sheet (for written submission only)

Ambassador Azimov cited in his April 30 cases stretching over six years.

As stated last week, New York journalist George Weber was killed by a young man who responded to Mr. Weber's internet ad for sex. The police acted swiftly, arresting a suspect a few days after the murder. As tragic as this killing was, there was no discernible connection to his work as a journalist.

We have reported previously to the Permanent Council on the killing of investigative reporter Chauncey Bailey in Oakland and responded to RFOM's request for information when the murder occurred. Handling of the case by local authorities was controversial, triggering engagement by news organizations and civil society in what has become the Chauncey Bailey Project. The Project sought to document defects in the investigative process and development of

STATE 00049126 002 OF 003

evidence. On April 29, the alleged mastermind of the conspiracy to kill Bailey was indicted for murder, along with the previously indicted trigger man. The extraordinary course of this case shows the resolve of civil society to permit no climate of impunity in the murder of a journalist.

Ambassador Azimov raised several cases of journalists he alleges were fired because of their political views or their reporting, including Phil Donahue, Peter Arnett, Lance Williams, Mark Fainaru-Wada and Dan Rather. In none of these cases, however, did he make any allegation that the U.S. government played a role in their dismissal. That's because the terms under which journalists are employed are entirely a private matter between the journalists and their private sector employers, so long as laws on non discrimination are observed.

With regard to the extremely rare cases in the United States where a reporter has been jailed, it is not for the content of their reporting, but for failing to comply with a subpoena in a criminal investigation. The U.S. Supreme Court has held that in such cases, reporters enjoy no privileges that exempt them from having to provide testimony before a grand jury. Nonetheless, the Administration supports passage of a federal media shield law provided it does not undermine the government's ability to enforce the law and protect national security, and is currently working with the Congress to craft a mutually acceptable bill.

The Kane County Chronicle newspaper in Illinois was ordered to pay \$3 million after a court ruled its 2003 articles about the Illinois Supreme Court Chief Justice libelous. The Chronicle agreed to apologize to the Chief Justice and paid a \$3 million settlement in court. Contrary to Ambassador Azimov's assertion, the Chronicle continues to report, and one may look for news on its website, <http://www.kcchronicle.com/>. Incidentally, since 1980, libel suits by judges have gone to trial twelve times, according to the Media Law Resource Center in New York. The judges have prevailed in five of those cases.

Ambassador Azimov charged that Federal Bureau of Investigation agents used tear gas on more than twenty innocent people, including journalists, who were not doing anything illegal, in San Juan, Puerto Rico, in February, 2006. In this incident, FBI agents were carrying out, under a search warrant, an apartment search in San Juan, Puerto

Rico. There was some controversy over whether or not physical force and pepper spray were used, or if agents put their hands in front of cameras of reporters who had massed near the apartment. A lawsuit was brought against the FBI, but a federal district judge concluded that the agents did not violate the First Amendment rights of the journalists and dismissed the case.

In a different case, nine people, including journalist Liz Seymour, were arrested during an anti-war protest in Greensboro, North Carolina. Each was charged with "impeding traffic," a misdemeanor offense. After being released, Ms. Seymour said, "I've never been arrested before, but I decided after a lot of soul-searching that we needed to do something to show that this affects all of us."

We thank Ambassador Azimov for raising journalist incidents at the national conventions last year of the Democratic and Republican parties.

There were 17,000 credentialed media workers in Denver for the Democratic Convention. The city government assisted the journalistic community in setting up a media hotline to help media workers obtain free 24-hour legal aid when they encountered access or reporting problems, or faced law-enforcement action. We think this merits consideration as a best practice.

Despite the multiplicity of political-party activities and street events, only one of the 17,000 with media credentials was arrested. Asa Eslocker was arrested and charged with trespass, interference, and failure to follow a lawful order while attempting to film Democratic Party officials and donors leaving a private event at a Denver hotel. He was released the next day. When the City Attorney reviewed the case against Eslocker after the convention, it was dismissed. No prosecution was undertaken.

The Republican convention in St. Paul, Minnesota was the largest event ever hosted by this small city. An AP photographer and three persons with media credentials from an organization, Democracy Now!, which calls itself a "nationally independent news program," were arrested during street demonstrations, and later released. After reviewing charges against these persons and the circumstances, St. Paul

STATE 00049126 003 OF 003

authorities dropped all charges. It should be noted that the unlawful assembly charges filed against them were for a misdemeanor offense, which is not considered to be a criminal charge. Mindful of controversy about its handling of large-scale street demonstrations with which the city had no previous experience, St. Paul commissioned after the convention an independent citizens' commission to study the city's performance and make recommendations for the future. The commission issued a report which has now been the basis for further civic debate. We think here too there is a potential best practice for RFOM's consideration.

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